

COASTAL CONSERVANCY

Staff Recommendation

April 27, 2006

BOLSA CHICA LOWLANDS RESTORATION

File No. 84-047

Project Manager: Peter S. Brand

RECOMMENDED ACTION: Amend authorization of March 25, 2004, to disburse up to \$10,000,000 to the State Lands Commission to assist in the restoration of approximately 566 acres of the Bolsa Chica wetlands complex, to allow for the grant to be used for all elements of the design and construction of the restoration project.

LOCATION: Orange County, along Pacific Coast Highway and bounded by the City of Huntington Beach (Exhibit 1)

PROGRAM CATEGORY: Integrated Coastal and Marine Resources Protection

EXHIBITS

Exhibit 1: Project Location and Site Map

Exhibit 2: Restoration Plan Maps

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31220 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes disbursement of an amount not to exceed ten million dollars (\$10,000,000) to the State Lands Commission for the restoration of approximately 566 acres of the Bolsa Chica lowlands subject to the following conditions:

1. Prior to the disbursement of any funds, the State Lands Commission shall submit for the review and approval of the Executive Officer of the Conservancy a work program for the design and construction of the restoration project;
2. The expenditure of Conservancy funds shall be limited to the design and construction costs of the restoration project and shall not be used for operation, maintenance and/or adaptive management of the restoration project.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project remains consistent with Public Resources Code Section 31220 regarding the Conservancy's mandate to improve and protect coastal and marine water quality and habitats.
 2. The proposed project remains consistent with the Project Selection Criteria and Guidelines adopted by the Conservancy on January 24, 2001.
 3. The proposed project remains consistent with the purposes of the Integrated Watershed Management Program, as well as the Watershed Management Initiative for the Bolsa Chica Watershed Management Area and the Water Quality Control Plan, Santa Ana River Basin. The project includes a monitoring and evaluation component.
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PROJECT SUMMARY:

On March 25, 2004, the Conservancy approved a grant of \$10 million to the State Lands Commission to restore a 566-acre portion of the wetland ecosystem of the Bolsa Chica lowlands in Orange County. The authorization limited the expenditure of Conservancy funds to certain elements of the project: the muted tidal basin, pocket muted tidal basin, nesting islands, and groundwater barrier (Exhibit 2). The State Lands Commission has asked that the Conservancy provide them with flexibility in the use of our funds because of the difficulty of itemizing those funds to only certain design elements and because of agreements among the agencies to pool grant funds for the project in the Kapiloff Land Bank account. Staff recommends that the funds be approved for any of the design and construction elements.

Since the project area was acquired in 1997, the cost of the restoration project has increased to approximately \$105 million, excluding acquisition, operation, and maintenance costs. Under the terms of the 1996 project agreement, the Conservancy and the other federal and state agencies agreed to actively seek additional monies since the amount of funding available to the project at that time was anticipated to be insufficient. That has continued to be the case.

When the Conservancy originally authorized the \$10 million in funding, staff indicated that the project might still need several million dollars in order to proceed to construction in the fall. The final cost would depend on selection of a winning construction bid. The State Lands Commission was also pursuing funding from the U.S. Fish and Wildlife Service. No funding for construction was forthcoming from the Service. After construction commenced, contract change orders were requested due to flooding in the winter of 2005. In June of 2005, the State Lands Commission requested additional funding from the Conservancy and the Wildlife Conservation Board. The Commission was told in July that no more funding would be considered unless and until all other potential remedies were exhausted. In August, 2005, revised agreements between the Ports and the Coastal Commission allowed the Ports to make additional mitigation payments totaling \$22.4 million for additional mitigation credits. The funding shortfall which has increased to \$18 million has now been covered. Port funds not needed for construction are being set aside for adaptive management and maintenance of the restored area.

In granting the Commission the needed flexibility, we are still prohibiting the use of our funds for operation and maintenance. Conservancy funds would be for construction contract costs only. The regulatory agencies have allowed the port funds to be used for any element of the project and therefore Conservancy funds are not singled out for construction of any specific habitat area.

Conservancy funds will be applied to design and construction contracts under the management of the U.S. Fish and Wildlife Service. The project design by the consortium of eight federal and state resource agencies has resulted in a project with habitat enhancements and public benefits greater than those minimally required by the regulatory agencies for mitigation credit.

Site Description: The area known as “Bolsa Chica” is a complex of approximately 1,600 acres of low lands and uplands that lies inland of Pacific Coast Highway in Orange County and is surrounded by the City of Huntington Beach (Exhibit 1).

The lowlands consist of about 1,200 acres of low-lying land, with extensive disturbed wetlands that are divided by levees and dotted by oil well pads, and the Inner Bolsa Bay, approximately 150 acres, that has been restored to tidal action and is managed by the Department of Fish and Game as an Ecological Reserve. Uplands are found on the levees and pads amid the wetlands and on the mesas at the northwest and southeast ends of the wetlands.

The Bolsa Chica lowlands are a remnant of a vast wetland complex that once stretched along the Orange County coast behind coastal beaches and dunes reaching inland along numerous stream channels. The historic Bolsa Chica wetlands were predominantly tidal wetlands with some areas of brackish and freshwater marsh.

As a consequence of blockage of the natural ocean connection around the turn of the century and subsequent oil field development, tidal circulation to most of the site was curtailed. The wetlands were variously filled, fragmented by levees, and isolated from freshwater runoff, and the land subsided two or more feet. Nevertheless, much of the lowlands among the levees and oil wells supported some wetland habitat. Most of the wells have been bought out and abandoned. A decision was made for economic reasons to allow extraction by the oil companies to continue on the future full tidal area until the oil has played out in 20 to 30 years at which time this area will be restored. The remainder of the lowlands is occupied by the Ecological Reserve, a flood control channel, and vacant land.

Project History: For over 20 years before the state acquired the area, debate raged over the disposition of the Bolsa Chica lowlands. Throughout this period, there was strong and vocal community support for wetland protection, most notably represented by the organization called the Amigos de Bolsa Chica. The County and the various private landowners made a series of land use proposals including housing, a connector road, and a marina, along with wetland restoration. In 1996, the Coastal Commission certified the County LCP, which provided for housing on the adjacent mesa and on approximately 180 acres of upland/wetland mosaic in the lowlands.

Meanwhile the Ports of Los Angeles and Long Beach had been investigating the possibility of contributing to wetland restoration at Bolsa Chica to offset the impacts of proposed development in submerged habitat in San Pedro Harbor. Off-site mitigation requirements specific to Bolsa Chica were negotiated primarily by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Coastal Commission.

An interagency project agreement was signed in 1996 by eight state and federal agencies: State Coastal Conservancy, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, National Marine Fisheries Service, California State Lands Commission (Lieutenant Governor, Controller and State Finance Director), California Resources Agency, and California Department of Fish and Game.

Under the terms of the multi-agency project agreement the majority of the lowlands, 880 acres, would be acquired for wetland protection and restoration, a first phase of restoration (approximately 566 acres) would be undertaken (subject to further environmental review and agency approvals), and the Ports of Los Angeles and Long Beach would be awarded 454 acres of mitigation credit. At the same time that it approved the agreement, the Conservancy also authorized disbursement of \$1 million, to be deposited in the State Lands Commission's interest-bearing Kapiloff Land Bank Fund, to assist with the acquisition of the lowlands. The agreement also required contributing agencies to pool their funds to ensure completion of the wetland construction project.

The 880-acre acquisition occurred in 1997 after a cleanup agreement was signed by the land-owners. The Ports made the required mitigation payment of \$78.6 million for the estimated cost of acquisition, restoration, and management. The balance of these funds that were not used for acquisition has been earning interest. In 2005, the Ports were allowed by the regulatory agencies to make another payment of \$22.8 million for additional mitigation credits.

Detailed engineering and environmental studies provided information for project compliance with environmental reviews. The U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers led the National Environmental Policy Act (NEPA) process and the State Lands Commission acted as lead agency for the California Environmental Quality Act (CEQA) review.

The environmental review process and project planning and design involved numerous public workshops and meetings between 1997 and 2002. In November 2001, the California Coastal Commission unanimously agreed with the U.S. Fish and Wildlife Service that the Project is consistent with California's federally approved Coastal Zone Management Plan. The California State Lands Commission unanimously certified the Final Environmental Impact Report (EIR), adopted a Mitigation Monitoring Program, and approved the Project on January 30, 2002. The U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service issued their respective Record of Decision on the EIS in the second quarter of 2002. The Fish and Wildlife Service contracted with an engineering firm to complete final design drawings and specifications for the Project.

Some contamination remains on the property to be restored. A cleanup plan is complete and the Regional Water Quality Control Board has established goals (numerical standards) that the project must achieve. The private parties who have assumed responsibility for the cleanup have agreed to these goals and are in the final stages of negotiating their agreements with State Lands and Fish and Wildlife Service on clean up. One entity proposes to undertake the site reclamation itself at whatever cost. The other proposes to pay for the projected cost and State Lands Commission will purchase environmental insurance to cover unanticipated reclamation costs up to \$10 million.

Construction began in October, 2005, and is expected to be completed in six months from this authorization. (Exhibit 2) During Phase 2, after the oil field is depleted in 25 to 30 years, the Project will purchase any remaining oil reserves, clean up the property, and create access to tidal water in another part of the site.

PROJECT FINANCING:

State Coastal Conservancy	\$10,000,000
Wildlife Conservation Board	10,000,000
Ports of Los Angeles and Long Beach	61,500,000

Interest	20,000,000
Additional Sources	<u>3,500,000</u>
Total Restoration Project Cost	\$105,000,000

The source of Conservancy funds for the proposed project is an appropriation to the Conservancy from the Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002 (Proposition 40) pursuant to the Watershed, Clean Beaches, and Water Quality Act, AB 2534 (Pavley, Chapter 727, Statutes of 2002, as amended). These funds may be used for coastal habitat restoration projects consistent with Section 31220 of the Public Resources Code.

The Ports of Long Beach and Los Angeles have met their mitigation commitment of \$101.5 million. The California State Lands Commission acquired 880 acres of lowlands with \$25 million of that amount. A separate fund account of \$5 million was set aside at the time of the 1996 project agreement for post-construction management, maintenance, and monitoring (\$6.7 million with interest). That set aside amount has now increased as a result of the second infusion of port funds to \$15 million. Thus \$40 million of the Port funds have already been spent or set aside for future costs leaving \$61.5 million of Port funds for restoration as noted above. The Wildlife Conservation Board has already granted \$10 million for restoration. The State Lands Commission now feels confident in the final restoration project expenses estimate of \$105 million. Of this, \$85.3 million is budgeted for construction contracts. The State Lands Commission, U.S. Fish and Wildlife Service, and the Corps of Engineers are billing \$4.1 million of their internal costs to the project. The total project cost including restoration, acquisition and operation and maintenance is now considered to be \$145 million.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

This project as amended remains consistent with Chapter 5.5 (Section 31220) of the Conservancy's enabling legislation, Division 21 of the Public Resources Code, regarding integrated coastal and marine resources protection projects.

CONSISTENCY WITH CONSERVANCY'S STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 5 Objective A**, the proposed project will restore 566 acres of coastal wetland habitat.

Consistent with **Goal 6 Objective B**, the proposed project will utilize a wetland project to improve water quality.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project as amended remains consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

In 1996, the Coastal Commission approved Orange County's Bolsa Chica Local Coastal Program. Also, the California Coastal Commission unanimously agreed with the U.S. Fish and Wildlife Service in November 2001 that the restoration plan is consistent with California's federally-approved Coastal Zone Management Plan.

**CONSISTENCY WITH LOCAL WATERSHED MANAGEMENT PLAN/
STATE WATER QUALITY CONTROL PLAN:**

The proposed project is designed to improve watershed efficiency through the creation and enhancement of wetlands and the restoration of open space and to restore native fisheries and restore other threatened species. The project is therefore consistent with the purposes of the Integrated Watershed Management Program, established under Section 30947 of the Public Resources Code. The project is consistent with the Watershed Management Initiative for the Bolsa Chica Watershed Management Area adopted by the Santa Ana Regional Water Quality Control Board in 2002. Bolsa Chica is specifically included by the Regional Board in its list of projects needed for implementing the Watershed Management Initiative and other regional and watershed-specific initiatives. The Regional Board serves on the Bolsa Chica Technical Advisory Committee, oversees cleanup related issues and provides technical assistance in the restoration of the wetlands.

The proposed project is also consistent with the Water Quality Control Plan, Santa Ana River Basin, which has been approved by the Water Resources Control Board. The Santa Ana Regional Water Quality Control Board has also recently passed a resolution, No. 97-19, to become the lead regulatory agency overseeing cleanup of the Bolsa Chica Restoration Area under the authority of the Water Code and the Basin Plan.

COMPLIANCE WITH CEQA:

In its prior approval of the project on March 25, 2004, the Conservancy approved and adopted the EIR, the mitigation and monitoring plan, and statement of overriding considerations. Accordingly no new CEQA determination is required to allow more flexible expenditure of funds as authorized under this approval.